

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

TECH PHARMACY SERVICES, LLC,) Docket No. 16 CV 10909
)
Plaintiff,)
) Chicago, Illinois
vs.) December 7, 2016
) 9:00 o'clock a.m.
ALIXA RX LLC, et al.,)
)
Defendant.)

TRANSCRIPT OF PROCEEDINGS - Motion
BEFORE THE HONORABLE SAMUEL DER-YEGHIAYAN

APPEARANCES:

For the Plaintiff: HOGAN LOVELLS US LLP
 BY: MS. JENNIFER A. FLEURY
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 Houston, Texas 77002

For the Defendant: GOULD AND RATNER LLP
 BY: MS. STEPHANIE A. PETERSMARCK
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1 (The following proceedings were had in open court:)

2 COURTROOM DEPUTY: 16 C 10909, Tech Pharmacy versus
3 Alixa.

4 MS. FLEURY: Good morning, your Honor. Jennifer
5 Fleury appearing on behalf of Tech Pharmacy.

6 THE COURT: Good morning. Go ahead.

7 MS. PETERSMARCK: Good morning, your Honor.
8 Stephanie Petersmarck on behalf of the non-party subpoena
9 respondent.

10 THE COURT: Okay. So the subpoena was issued for
11 who?

12 MS. PETERSMARCK: I'm sorry, sir?

13 THE COURT: Who was the subpoena issued for?

14 MS. PETERSMARCK: Plaintiff issued the subpoena to
15 my client Design Integrity.

16 THE COURT: Design Integrity. And Design Integrity
17 is a Chicago or Illinois --

18 MS. PETERSMARCK: A local small business, sir;
19 yes.

20 THE COURT: And now there is motion by plaintiff
21 obviously for Design Integrity to comply with the subpoena,
22 right?

23 MS. FLEURY: That is correct, as well as a motion to
24 transfer to the issuing court.

25 THE COURT: So then the second motion was to

1 transfer, you know -- I think it's in Texas or something?

2 MS. FLEURY: In the Eastern District of Texas; yes,
3 your Honor.

4 THE COURT: In the Eastern District of Texas. Is
5 there a division or something or it's --

6 MS. FLEURY: The Eastern District, yes.

7 THE COURT: Eastern District of Texas. Do they like
8 have a division?

9 MS. FLEURY: It's its own --

10 THE COURT: Like Northern District of Illinois has
11 Western Division in Rockford, for example. Do they have any
12 subdivisions?

13 MS. FLEURY: I'm not aware of it.

14 THE COURT: Okay. Because a couple times when we
15 were dealing with a transfer, it turned out that that
16 transferee district had certain divisions.

17 MS. FLEURY: I'm sorry. I apologize, your Honor. I
18 just had a slip of the brain. It's Sherman Division.

19 THE COURT: What?

20 MS. FLEURY: My colleague reminded me it's Sherman
21 Division.

22 THE COURT: Sherman, okay. Thank you. Just for
23 clarity in case the motion is granted. I think you're doing
24 that under Rule 45?

25 MS. FLEURY: That's correct, your Honor.

1 THE COURT: Okay. What's your view of the request
2 to transfer?

3 MS. PETERSMARCK: Well, your Honor, we're strongly
4 opposed to it. We believe that the motion to transfer is
5 just more harassment from plaintiff trying to involve us in
6 the games that they're playing with defendant. We had timely
7 served --

8 THE COURT: When you say "defendant," meaning your
9 client?

10 MS. PETERSMARCK: No, sir. The defendant --

11 THE COURT: The defendant in the case in Texas?

12 MS. PETERSMARCK: Correct.

13 THE COURT: What's your relationship to that
14 defendant?

15 MS. PETERSMARCK: Well, they are seeking from us
16 documents among other things -- the majority of the documents
17 they seek from us are documents between us and defendant back
18 from -- I want to say it was 2006 although plaintiff's
19 counsel will correct me. I'm not as involved in the actual
20 details of their lawsuit. They are requesting from us
21 communications and agreements and papers that we exchanged as
22 sort of an assessor for some project that defendant was
23 performing with plaintiff back then, your Honor.

24 So our position has been and we responded timely
25 within the 14-day period with responses and objections to

1 their terribly overly broad unduly burdensome discovery
2 requests, subpoena, and we then were contacted and had been
3 involved in many conferences with them. We've spent more
4 than \$15,000 responding to these subpoenas. My client has
5 spent more than 40 hours of his own time that he had to take
6 away from running his business. Plaintiff is still
7 unsatisfied.

8 Despite our valid objections on timely objections,
9 we agreed with plaintiff that we would attempt to comply with
10 their subpoena so long as they cover the costs. Instead they
11 continue to harass us using eight attorneys now flying in --
12 two of them from Texas -- now trying to move us to Texas
13 where they know we can't afford counsel.

14 Rule 45(d)(1) requires a party or attorney
15 responsible for issuing and serving a subpoena must take
16 reasonable steps to avoid imposing undue burden or expense on
17 a person subject to subpoena. The court for the district
18 where compliance is required -- that's this court -- must
19 enforce this duty and impose an appropriate sanction which
20 may include lost earnings and reasonable attorneys' fees on a
21 party or attorney who has failed to comply under
22 45(d)(2)(B)(ii).

23 THE COURT: That's against you, right?

24 MS. PETERSMARCK: Pardon me, sir?

25 THE COURT: That's against you?

1 MS. PETERSMARCK: No. It's against plaintiff.

2 THE COURT: Failure to reply or failure to comply.

3 MS. PETERSMARCK: No, sir. It's their failure to
4 take reasonable steps to avoid imposing an undue burden --

5 THE COURT: I see.

6 MS. PETERSMARCK: -- and expense on my client who is
7 not a party and is a local, a small business and is subject
8 to this court's jurisdiction.

9 THE COURT: Okay.

10 MS. PETERSMARCK: Not the jurisdiction of the
11 Eastern District of Texas.

12 THE COURT: Okay. Let me ask the simple question:
13 You have no interest in the case on the merits between
14 plaintiff and defendant in Texas, right?

15 MS. PETERSMARCK: That is my understanding. I've
16 tried to get information from plaintiff as to whether or not
17 that this was really a fishing expedition where they're
18 trying to bring us in.

19 THE COURT: No. That's not my question.

20 My question is, you as the attorney for Design
21 Integrity, you said -- does Design Integrity have any
22 interest in the litigation between plaintiff and defendant in
23 Texas?

24 MS. PETERSMARCK: My position is no, sir, based on
25 what I know.

1 THE COURT: Okay. So you're not out there trying to
2 help the defendant, are you?

3 MS. PETERSMARCK: No, sir.

4 THE COURT: Okay. I mean, you're not partners or
5 like affiliates? You just had business with them?

6 MS. PETERSMARCK: Correct. With business and, as
7 far as I understand it, with plaintiff as well perhaps. The
8 deal was between plaintiff and defendant and we were brought
9 in as some sort of third-party --

10 THE COURT: I understand. So counsel for plaintiff,
11 what does the request for Design Integrity relate to?

12 MS. FLEURY: Two things, your Honor. Design
13 Integrity's role in the underlying litigation is two-fold.
14 First, Design Integrity was a third-party consultant engaged
15 by defendants -- engaged by actually another third party,
16 Walgreens, in the underlying litigation to investigate and
17 conduct due diligence on the subject technology.

18 Your Honor, this is a patent case in the Eastern
19 District of Texas with 90 patent claims. It is -- it also
20 involves claims involving trade secret, the theft of my
21 client's trade secrets and fraud claims. The allegations
22 here --

23 THE COURT: So the claims in a patent case, whatever
24 they are, the information that Design Integrity has, it's
25 relevant to the case in Texas?

1 MS. FLEURY: That is correct. It is highly relevant
2 to the case in Texas.

3 THE COURT: Okay. It's not like fishing expedition
4 that is being termed?

5 MS. FLEURY: Absolutely not, your Honor. And I'd
6 like to explain the role Design Integrity plays in this suit
7 because I think it will be helpful for evaluating both
8 motions before your Honor.

9 To make it simple, Design Integrity was conducting
10 due diligence on Tech Pharmacy. We've learned through the
11 discovery process that Design Integrity authored a 200-page
12 engineering report -- just as an example of something we've
13 learned of recently, a 200-page engineering report on the
14 subject technology. And then the second role that they
15 played in the underlying litigation, they were engaged by
16 defendants to perform engineering services in connection with
17 defendant's attempts to build a rival technology.

18 So Design Integrity, while a non-party to this suit,
19 possesses documents that are highly relevant to our client's
20 claims in this suit. And so we seek first a motion to
21 transfer to the issuing court -- in this case the Eastern
22 District of Texas -- so that -- because that court has been
23 highly engaged in case management, in rulings involving
24 discovery as well as merits.

25 THE COURT: Okay. Has knowledge about the case and

1 the issues and the merits. But could you have filed with
2 that court the issue of the subpoena?

3 MS. FLEURY: My understanding is that we needed to
4 file here.

5 THE COURT: Because the person who is subject to
6 subpoena is within the jurisdiction of the court here, that's
7 why any enforcement of subpoenas are filed with the court
8 that has jurisdiction over the subpoena receiver, right?

9 MS. FLEURY: Correct.

10 THE COURT: So how does that work if I transfer the
11 motion for enforcement of the subpoena to the court in Texas?
12 Does that mean that jurisdiction is now vested in the court
13 in Texas to enforce that subpoena on somebody who doesn't
14 live in Texas?

15 MS. FLEURY: That's correct. The rules allow
16 explicitly for transfers even absent consent by the subpoena
17 third-party. And the rules say that -- for example, the
18 advisory committee notes on the rule explicitly mention case
19 management being one of the reasons and risk of inconsistent
20 rulings being another reason that provide that.

21 THE COURT: I understand those things but then
22 jurisdiction will be vested in the transferee court --

23 MS. FLEURY: That's correct.

24 THE COURT: -- which is the original court of
25 jurisdiction over the case on the merits.

1 MS. FLEURY: Correct, your Honor.

2 THE COURT: Okay. Counsel for Design Integrity, you
3 talk about all kinds of like expenses and harassment and why
4 couldn't you provide the requested information instead of
5 getting all kinds of litigation costs and everything else?

6 MS. PETERSMARCK: So we have tried to -- our biggest
7 problem -- well, in addition to responding to the
8 overbreadth, we have been working with plaintiffs, is that we
9 were subject to a number of restrictive covenants, a number
10 of the agreements they asked for. And, in fact, all of the
11 information or the majority of the information that counsel
12 just told you about is information they could get from
13 defendants but instead they've imposed this undue burden on
14 us.

15 We tried very hard from the day we got the subpoena
16 to try and gather the information to understand what it
17 means. We were first confronted with a number of restrictive
18 covenants with non-parties and parties, including the
19 defendant. We had to go and try and get permission from them
20 to release the information. Some of the documents were not
21 even allowed to mention the name they're so restrictive. So
22 we've gone through all of that, finally gotten the
23 permissions we could, produced those agreements and said to
24 plaintiff, look, we've -- it's already taken us this much
25 time and money, we will even subject to our objections give

1 this to you, all you have to do is agree to cover the costs.
2 Instead of covering the costs of having us produce the
3 information, they've spent all of this money filing a 76-page
4 motion to compel; now a motion to transfer.

5 It is unduly burdensome, sir, for us to have to go
6 to Texas. We simply can't do it. We also don't have the
7 time and money to actually be doing what they're requiring us
8 to do unless they agree to pay us for it, cover our costs,
9 that is to say.

10 So that's all we're asking the Court to do is
11 enforce 45(d)(1) as well as 45(d)(B)(ii). We will work with
12 them as we've said we would do all along if they would agree
13 to cover your substantial expense and avoid undue burden on
14 my client.

15 THE COURT: Okay.

16 MS. FLEURY: If I may respond, your Honor, we have
17 been willing to engage in a discussion of cost-sharing
18 arrangements. We have explicitly said that we would enter
19 into a cost-sharing arrangement. We've asked for over a
20 month now for a concrete estimate of the costs of responding
21 to this subpoena. They've had long enough now to provide us
22 with an estimate of those costs and they have failed to do
23 so.

24 I would also mention that again this process has
25 been ongoing. We've had three concrete meet-and-confers. We

1 have been willing to do whatever we could to reduce any
2 burden on Design Integrity. What's at issue here is from the
3 day of -- from the first communication from counsel from
4 Design Integrity, they have said we are unwilling to produce
5 a single document until you agree, Tech Pharmacy, a blanket
6 agreement to cover 100 percent of the costs no matter what
7 those costs are and we understandably said that's not going
8 to work, we need to enter into a reasonable agreement, how
9 about we produce things incrementally.

10 Again, we've only been able to obtain from them 11
11 documents in this case and we know for a fact that they
12 have -- and she's told us that there is -- substantial other
13 responsive documents.

14 THE COURT: Okay. Counsel for Design Integrity, you
15 cited the rule talking about undue burden. It looked like
16 what counsel for plaintiff is saying that they offered to
17 share that burden so that it's not an undue burden. Why
18 wouldn't you do that?

19 MS. PETERSMARCK: What she's just explained to you,
20 sir, is not accurate. What we did is we've already spent the
21 15,040 hours. Courts have found that 9,000 -- as little as
22 9,000 is already a substantial expense. What we did is
23 say -- plaintiff said they'll cost-share but they won't agree
24 to actually pay.

25 So what happened was I said, listen, here are the

1 documents that my client has been able to say might contain
2 responsive information. He's never been a defendant before.
3 He's never been a subpoena recipient respondent before. He
4 can't tell you how much it's going to cost for him to review
5 all of these gigs of data and this volume of hard copies,
6 here's what we have, do you want to go in increments. Say,
7 if you guys agree to cover our costs, we will go ahead and
8 have someone come in and like do the volume, tell us, we'll
9 go through search terms with you, we will try and work with
10 you. They've -- the most they said is we'll share costs but
11 they won't say they'll cover the cost.

12 So our position, sir, is we've already spent what
13 courts have found to be a substantial amount and spent a lot
14 of time that we haven't been compensated for so we've already
15 met that burden of having spent a substantial expense.
16 Anything they want after that they should agree to cover the
17 cost in total. We will go step by step. If they say hey,
18 no, you know, that's more than we think we want to go
19 through, fine; we'll pull back.

20 I've also said if you want to identify for me --
21 this is the first I'm hearing of a report -- if they wanted
22 to identify for us a report or some other small volume of
23 documents, we'd be happy to review them and provide them if
24 we thought they were responsive and not otherwise
25 objectionable.

1 We are not trying to be litigious. We actually want
2 the opposite. We'd like the Court's assistance. We don't
3 feel that plaintiff is being particularly candid, that they
4 are trying to a harass us and use us as some sort of pawn in
5 their litigation. We don't want to be involved. We will
6 give them whatever we're required to give them but we cannot
7 afford to keep playing these games.

8 THE COURT: You made some serious accusations
9 against plaintiff and plaintiff's counsel and you better have
10 the facts to support those accusations.

11 Right now, I'll give you ten minutes to go out
12 there, chat with each other if you're willing to comply with
13 cost-sharing and then you voluntarily do so. If not, I'm
14 going to give each one of you a short briefing schedule like
15 two days and then I will make a ruling on the motion to
16 transfer because counsel for Design Integrity, you already
17 answered the question whether the motion to transfer should
18 be granted or not in part by saying that there is all kinds
19 of restrictive covenants and that's why you don't want to
20 produce and the underlying court might be the best position
21 to rule on those issues so I'm just saying that, you know,
22 without making a decision but there are many issues that come
23 into play relating to a motion to transfer. One of them is
24 what I just said.

25 So if you guys agree -- and let me point this out

1 that not complying with a subpoena and add-in costs does not
2 create the undue burden that you say you already met by
3 spending \$9,000. Otherwise, every recipient of a subpoena
4 might just delay complying with it, accumulate attorneys'
5 fees and say now the subpoena should be defeated because we
6 already met -- we spent money, this is unduly burdensome on
7 us.

8 So I'm suggesting that reasonable minds can come to
9 an agreement to cost-sharing and to decide whether you could
10 comply with the subpoena with the cost-sharing. Otherwise,
11 I'll rule on the motion after I receive briefings from both
12 sides. Meaning in two days, you'll answer in writing
13 plaintiff's motion to transfer and then plaintiff within two
14 days thereafter files its reply. So today is December 7th.
15 By December 9th, you'll answer. By December 12th, plaintiff
16 replies. And I'll make a decision within the next one or two
17 days, so.

18 Why don't you chat out there to see if you could
19 resolve it? I'll call the case back.

20 MS. FLEURY: Thank you, your Honor.

21 THE COURT: Okay. Thank you.

22 (WHEREUPON the Court turned his attention to other
23 matters on his call; after which the following proceedings
24 were had in open court:)

25 COURTROOM DEPUTY: 16 CV 10909, Tech Pharmacy versus

1 Alixa.

2 MS. FLEURY: Good morning, your Honor. I think
3 we've made some progress.

4 THE COURT: Okay.

5 MS. FLEURY: We discussed --

6 THE COURT: Can you identify again yourselves?

7 MS. FLEURY: My apologies, your Honor. I'm Jennifer
8 Fleury on behalf of Tech Pharmacy.

9 THE COURT: Thank you.

10 MS. PETERSMARCK: This is Stephanie Petersmarck on
11 behalf of Design Integrity, the non-party subpoena
12 recipient.

13 THE COURT: Thank you. Go ahead, counsel. You may
14 continue.

15 MS. FLEURY: So the progress that we've made is we
16 have discussed with counsel for Design Integrity that Tech
17 Pharmacy is willing to bear the costs of copying the paper
18 documents that she's identified today. She's talked about a
19 stack of ten to 12 inches of paper documents identified as
20 potentially responsive and we're going to send someone to
21 copy those documents at our cost.

22 THE COURT: Okay.

23 MS. FLEURY: We've also talked about in terms of the
24 e-mail custodians, that we'll identify five custodians and
25 ten search terms and we can identify those by Friday at the

1 latest and she'll search e-mails in accordance with those
2 terms and provide them with our vendor electronically and
3 we'll bear the costs of printing and everything that happens
4 subsequently.

5 The issue that remains is that counsel for Design
6 Integrity has voiced continuing concerns about restrictive
7 covenants and has said that she needs a motion to compel
8 those documents in order for us to kind of go along with this
9 agreement that we've reached.

10 MS. PETERSMARCK: Meaning that we need the Court to
11 compel us to produce responsive documents because some of the
12 parties to these restrictive covenants --

13 THE COURT: You need a court order?

14 MS. PETERSMARCK: Correct.

15 THE COURT: Okay. In order to ensure that the
16 underlying case has the ability -- the underlying case judge
17 to rule on the merits of the case, it would be appropriate
18 for me to order compelling the production of those
19 documents.

20 MS. FLEURY: Thank you, your Honor.

21 MS. PETERSMARCK: And then one other, sort of,
22 related issue and that is that, you know, our position is
23 that plaintiff should cover the costs of attorney review of
24 these documents since my client can't do that. Plaintiff is
25 not agreeing to do that. So whatever my client decides to do

1 as a result of that, our concern is that if he doesn't have
2 attorney review or even if he did and there was some
3 accidents, that if material that was not responsive to the
4 subpoena and so isn't covered by your Honor's order today --
5 for example, for other non-parties that have nothing to do
6 with this lawsuit gets caught up and produced inadvertently
7 to plaintiff and that that material is subject to other
8 restrictive covenants -- that we be allowed to claw it back
9 or otherwise that we haven't violated whatever other
10 restrictive covenants might exist with parties that aren't
11 involved in this lawsuit.

12 THE COURT: Okay. I don't like conditional orders
13 or things like that. Right now if attorney for Design
14 Integrity reviews -- you're talking about reviewing the
15 covenants, the restrictive covenant documents that you are
16 aware of, right?

17 MS. PETERSMARCK: No. It's the others. My client
18 because he often works for people in like sensitive
19 situations, some material that's outside of this lawsuit
20 might be intermingled with some of the stuff that we end up
21 producing.

22 THE COURT: One second. I'm saying you should only
23 produce things that relate to this case, not something
24 outside parties' information. So it relates to
25 communications between the defendant and related

1 communications between Design Integrity.

2 So, counsel for plaintiff, you're seeking certain
3 documents, correct?

4 MS. FLEURY: Correct, and --

5 THE COURT: Counsel for Design Integrity says some
6 of those documents have, maybe, restrictive covenant, right?

7 MS. FLEURY: Correct.

8 THE COURT: Okay. I'm saying only those documents
9 that you requested should be produced regardless of the
10 restrictive covenant. That's all I'm saying. I'm not going
11 to agree to the production inadvertently of other documents.
12 That's up to counsel for Design Integrity to decide that the
13 right documents are produced. And if inadvertently something
14 is produced to counsel for plaintiff, maybe plaintiff's
15 counsel could return that immediately.

16 MS. FLEURY: Absolutely, your Honor --

17 THE COURT: And then I could issue --

18 MS. FLEURY: -- in accordance with the rules.
19 Absolutely.

20 THE COURT: -- a protective order right now orally
21 that there's a protective order relating to any such
22 documents that inadvertently might have been produced. Would
23 that satisfy you?

24 MS. PETERSMARCK: Thank you, sir.

25 THE COURT: Okay.

1 MS. FLEURY: Just one more thing, your Honor, I
2 wanted to make clear on the record, just that we've agreed --
3 we've reached agreement with counsel for Design Integrity as
4 to those paper documents that she's already identified.
5 She's going to have someone look at those and produce all
6 responsive documents from her subpoena.

7 THE COURT: Correct. And the only issue left is
8 whether there's going to be any attorney review and costs of
9 attorney review. What's that about?

10 MS. FLEURY: Again, our position, your Honor, is
11 that we've agreed to bear the costs of printing, of sending a
12 copier. We're not required to bear the costs of any internal
13 review that they decide to do on their end.

14 THE COURT: I think that's fair. I think that's a
15 fair solution because the alternative could be a lot worse.
16 I think, you know, Design Integrity should review its own
17 documents and not be paid for by plaintiff's counsel.

18 MS. FLEURY: Your Honor, one last issue. Could we
19 set a date by which they will produce these documents?

20 THE COURT: Oh, yeah. I'm going to -- I'm not
21 dismissing -- I'm entering and continuing your motion to
22 transfer and your motion for enforcement of the subpoena
23 because now there is a potential resolution.

24 Counsel for -- let me ask first counsel for
25 plaintiff, when is your next hearing with the Texas court? I

1 mean, U.S. District Court in Texas?

2 MS. FLEURY: If you'll just give me a moment, your
3 Honor, I have the scheduling order.

4 THE COURT: I just don't want to kind of delay any
5 case in Texas due to this, so.

6 MS. FLEURY: Our discovery deadline currently is set
7 for March 17th.

8 THE COURT: Okay. We're good then. Counsel for
9 Design Integrity, when can you produce these documents?

10 MS. PETERSMARCK: The hard copy documents, sir, I
11 believe we could probably get within two weeks; hopefully
12 shorter. I need to talk to my client. And then the
13 electronic documents, we'll be waiting to receive from
14 plaintiff's counsel the search terms and custodians.

15 THE COURT: Which you will do immediately, right?

16 MS. FLEURY: We will do that by Friday, your
17 Honor.

18 THE COURT: Okay. Then try to respond to those
19 since they're electronic.

20 MS. PETERSMARCK: So I'll say --

21 THE COURT: -- within the same period.

22 MS. PETERSMARCK: -- if we could have the same two
23 weeks --

24 THE COURT: Two weeks.

25 MS. PETERSMARCK: -- to at least identify to them

1 what we're looking at and, you know, go make collection
2 efforts after that.

3 THE COURT: Fair enough, fair enough. Within two
4 weeks. What I'll do is I'll set a status early January, like
5 January 12th, next status. By then, everything should have
6 been resolved.

7 MS. PETERSMARCK: One other thing, your Honor.

8 THE COURT: Sure.

9 MS. PETERSMARCK: I think we already talked about it
10 and counsel and I have agreed but some of the agreements that
11 we've gotten from other parties with these restrictive
12 covenants is that we designate all of the documents with the
13 highest level of protection as permitted by the court; and if
14 that's still agreeable to plaintiff's counsel, I just want to
15 get on the record that we're going to be designating all the
16 documents as -- I think it's --

17 MS. FLEURY: Attorneys' eyes only.

18 THE COURT: Yes. I'm saying a protective order is
19 entered by me right now for those. Okay.

20 MS. FLEURY: And just to clarify, your Honor, the
21 January 12th status, there's a preliminary deadline in place
22 for two weeks, correct?

23 THE COURT: Two weeks starts today. By December
24 21st, they will produce you all the documents and the e-mail
25 information provided that you get to them within the next day

1 or so, next couple days, the information.

2 MS. FLEURY: Thank you, your Honor.

3 THE COURT: Okay. And then -- you know, let me do
4 it by December 23rd instead of 21st. Since you're going to
5 take couple days, we'll add the two-week period with a couple
6 days. December 23rd. Then we'll come back on January 12th.
7 If all is resolved by December 23rd, then what I would
8 suggest is you might just file a notice of, you know,
9 striking both motions so that we don't come on January 12th.
10 If you don't think it was resolved and you're not going to
11 file a motion to strike the two motions, then we'll come on
12 January 12th. I've entered and continued both motions. Then
13 I'll decide what to do on those on January 12th.

14 MS. FLEURY: Thank you, your Honor.

15 THE COURT: Okay. Any other questions? Thank
16 you.

17 MS. PETERSMARCK: Thank you, Judge.

18 MS. FLEURY: Thank you very much.

19 (Which concluded the proceedings in the above-entitled
20 matter.)

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C E R T I F I C A T E

I hereby certify that the foregoing is a transcript
of proceedings before the Honorable Samuel Der-Yeghiayan on
December 7, 2016.

/s/Laura LaCien

Laura LaCien
Official Court Reporter

December 8, 2016
Date